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18 UNITED STATES OF AMERICA

19 UNITED STATES DISTRICT COURT

20 FOR THE CENTRAL DISTRICT OF CALIFORNIA

21 UNITED STATES OF AMERICA,

22 No. CR 14-208-BRO

23 Plaintiff,

24 EX PARTE APPLICATION FOR AN ORDER  
25 ALLOWING THE GOVERNMENT TO FILE  
ITS RESPONSE ONE DAY LATE

v.

26 CHRISTOPHER JOHNSON and  
27 ROBERT KIRSCH,

28 Defendants.

29 Plaintiff, United States of America, by and through its  
30 attorney of record, the United States Attorney for the Central  
31 District of California, hereby respectfully applies ex parte to this  
32 Court for an order allowing the government to file its response to  
33 defendant Johnson's motion for an order allowing access to witnesses

1 one day late. This application is based on the attached declaration  
2 of Lawrence S. Middleton, and on the records and files of this case.

3 DATED: May 28, 2015

STEPHANIE YONEKURA  
4 Acting United States Attorney

5 ROBERT E. DUGDALE  
6 Assistant United States Attorney  
Chief, Criminal Division

7 /s/  
8 LAWRENCE S. MIDDLETON  
9 Assistant United States Attorney

10 Attorneys for Plaintiff  
11 United States of America

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DECLARATION OF LAWRENCE S. MIDDLETON

I, Lawrence S. Middleton, hereby declare and state as follows:

1. I am an Assistant United States Attorney ("AUSA") for the Central District of California, and I am assigned to prepare the government's response to defendant Christopher Johnson's motion for an order allowing access to witnesses in the matter of United States v. Christopher Johnson and Robert Kirsch, CR 14-208-BRO. This declaration is submitted in support of the government's ex parte application for an order allowing the government to file its response on May 28, 2015; one day late.

2. On or about May 18, 2015, the parties appeared before the court for a status conference regarding the trial scheduled to begin on June 16, 2015. At that time counsel for defendant Johnson advised the court that he was having difficulty interviewing certain witnesses that he wanted to interview as part of his preparation for the trial. The court directed counsel to brief the issue in a motion to be filed on May 22, 2015. The court also asked counsel for the government how much time the government would need to file a response to defense counsel's motion. At that time, as counsel for the government, I believed I could have a response filed by no later than May 27, 2015, and accordingly, the court ordered that the government file its response on that date.

1       3. At the time of the status conference on May 18, 2015,  
2 counsel for the government was also preparing for trial in United  
3 States v. Itkowitz, CR No. 12-837-PSG, which was set to begin on  
4 July 14, 2015. Following the status conference before this court,  
5 on May 20, 2015, a status conference was held in the Itkowitz  
6 matter, and the trial was continued to July 21, 2015. The parties  
7 and the court also discussed trial preparation, including jury  
8 selection, and a further status conference was set for May 27, 2015.  
9  
10 Then, on May 22, 2015, shortly before defense counsel filed his  
11 motion in this case, defense counsel in Itkowitz filed a motion  
12 raising an issue to be discussed at the upcoming May 27, 2015,  
13 status conference. Because the defense filing in Itkowitz had not  
14 been anticipated, I was not able to devote as much time to filing my  
15 response to defendant Johnson's motion as I had anticipated.  
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17       4. In addition to the unanticipated filing of the defense  
18 motion in United States v. Itkowitz, subsequent to the May 18, 2015  
19 status conference before this court, and after I advised the court  
20 that the government could have its response filed by May 27, 2015, I  
21 learned that the United States Courthouse building would be closed  
22 from on the morning of May 23, 2015 through sometime on May 25,  
23 2015. Therefore, I was unable to work from the office during that  
24 time period. Although I was able to do some work from home, I was  
25 not able to work nearly as efficiently. Thus, although I made an  
26 honest and diligent effort to get the government's pleading filed in  
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1 a timely manner, I was not able to file it until the early morning  
2 hours of May 28, 2015. Accordingly, I am seeking an order from the  
3 court allowing the government's pleading to be filed one day late.

4 5. On May 28, 2015, I exchanged emails with attorney Robert  
5 Rabe, who represents defendant Johnson in this matter, to get his  
6 position on the government's ex parte application. Mr. Rabe stated  
7 that he has no objection to the government's ex parte application  
8 for an order allowing the government to file its response in this  
9 matter one day late.

11 I declare under penalty of perjury that the foregoing is true  
12 and correct.

13 Dated this 28<sup>th</sup> day of May, 2015, in Los Angeles, California.

15 /S/  
16 LAWRENCE S. MIDDLETON